

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM JOSEPH METZGER, II,

Plaintiff,

WESLEY C. DALTON, et al.,

Defendants.

No. 4:19-cv-02375-AGF

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff William Joseph Metzger, II's motion for leave to file a belated appeal (Docket No. 23), motion for leave to proceed in forma pauperis on appeal (Docket No. 25), and motion to appoint counsel on appeal (Docket No. 26). For the reasons discussed below, the motions will be denied.

Motion for Leave to File a Belated Appeal

First, plaintiff has filed a motion for leave to file a belated appeal. (Docket No. 23). He filed a similar motion on April 10, 2020. (Docket No. 14). The Court denied that motion because it was untimely, and because plaintiff had not shown "excusable neglect or good cause." (Docket No. 17). Nevertheless, plaintiff filed a notice of appeal, which the United States Court of Appeals for the Eighth Circuit has received. (Docket No. 20). Now, plaintiff again seeks leave to file a belated appeal. The motion will be denied as moot, as plaintiff has an appeal currently pending before the Eighth Circuit.

Motion for Leave to Proceed in Forma Pauperis on Appeal

Plaintiff has also filed a second motion for leave to proceed in forma pauperis on appeal. When this Court dismissed plaintiff's case, it certified in writing that an appeal would not be taken

in good faith, *see* 28 U.S.C. § 1915(a)(3), and it is not apparent that plaintiff now seeks appellate review of any issue that is not frivolous. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). The Court will therefore deny the motion.

Motion to Appoint Counsel on Appeal

Finally, plaintiff has filed a motion to appoint counsel on appeal. (Docket No. 26). In civil cases, a pro se litigant does not have a constitutional or statutory right to appointed counsel. *Ward v. Smith*, 721 F.3d 940, 942 (8th Cir. 2013). Rather, a district court may appoint counsel in a civil case if the court is “convinced that an indigent plaintiff has stated a non-frivolous claim...and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel.” *Patterson v. Kelley*, 902 F.3d 845, 850 (8th Cir. 2018). When the Court dismissed plaintiff’s complaint, it certified in writing that an appeal would not be taken in good faith. In other words, the Court has determined that plaintiff has failed to state a non-frivolous claim. Therefore, the motion to appoint counsel on appeal will be denied.

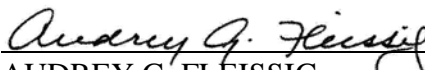
Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to file a belated appeal (Docket No. 23) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that plaintiff’s motion to proceed in forma pauperis on appeal (Docket No. 25) is **DENIED**.

IT IS FURTHER ORDERED that plaintiff’s motion for appointment of counsel on appeal (Docket No. 26) is **DENIED**.

Dated this 7th day of May, 2020.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE